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Attorneys for Plaintiff
3M COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

3M COMPANY,

Plaintiff,

vs.

UGLY JUICE, LLC, a California Limited Liability
Company, dba GOOD USE; RDGIV Holdings LLC,
an Alabama Limited Liability Company; GRANT
CARLSON, BLAIR BORTHWICK, SLAVA
CHUPRYNA, SABRINA CORPUS, and RALPH
DEWAR GAINES,

Defendants.

) CASE NO. 21-cv-02338-EJD

) Hon. Edward J. Davila

) **SUPPLEMENTAL JOINT**
) **DECLARATION OF DOUGLAS**
) **SMURR AND GREG LOCKWOOD**
) **IN SUPPORT OF PLAINTIFF'S**
) **MOTION FOR TEMPORARY**
) **RESTRAINING ORDER AND**
) **PRELIMINARY INJUNCTION**

) Hearing Date: April 22, 2021

) Hearing Time: 9:45AM

) Status Conference

) Location: Via Zoom Webinar Link

SUPPLEMENTAL JOINT DECLARATION OF

DOUGLAS SMURR AND GREG LOCKWOOD

I, Douglas Smurr, declare:

1. I am an attorney at law licensed to practice in the State of California. I am Of
Counsel with Gordon Rees Scully Mansukhani, LLP, counsel of record for Plaintiff 3M, in the
above-captioned case. I make this declaration in support of Plaintiff's Motion for Temporary
Restraining Order and Preliminary Injunction.

Gordon Rees Scully Mansukhani, LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111

1 I, Greg Lockwood, declare:

2 2. I am an attorney at law licensed to practice in the States of Oregon, Washington,
3 Minnesota, and Wisconsin, and the 9th Circuit Court of Appeals. I am a Partner with Gordon
4 Rees Scully Mansukhani, LLP, and am currently overseeing parts of Plaintiff 3M's nationwide
5 litigation matters related to counterfeit 3M-brand N95 respirators. In this role, I am assisting
6 with the above-captioned case. I make this declaration in support of Plaintiff's Motion for
7 Temporary Restraining Order and Preliminary Injunction.

8 3. When the term "We", "we", or ""our" is used in this joint declaration, it shall
9 refer to both Douglas Smurr and Greg Lockwood, only.

10 4. On April 15, 2021, Marcus Mc Elhenney sent Douglas Smurr an email stating: "I
11 have permission to represent Grant Carlson, Sabrina Corpus and Ugly Juice . . . the 'Ugly Juice'
12 Defendants." Smurr Decl [Docket No 10-2, p 7 of 10]

13 5. On Thursday, April 15, 2021, and on Friday April 16, 2021 we held joint
14 telephone calls with Marcus Mc Elhenney regarding the above-captioned matter. Each
15 telephone call with Marcus Mc Elhenney lasted approximately 12 minutes.

16 6. Between the dates of April 15, 2021 and April 19, 2021, Douglas Smurr and
17 Marcus Mc Elhenney exchanged a series of texts regarding the above-captioned case. True and
18 correct copies of the texts are attached hereto as **Exhibit 1**. The texts in green blocks are texts
19 sent by Douglas Smurr, and the texts in grey blocks are texts sent by Marcus Mc Elhenney.

20 7. On April 22, 2021 after appearing at the Zoom Status Conference, we received
21 three emails from Marcus Mc Elhenney. True and correct copies of the emails are attached
22 hereto as **Exhibit 2**. These three emails were the first communication either of us received from
23 Marcus Mc Elhenney since the last text he sent to Douglas Smurr on Friday, April 16, 2021.

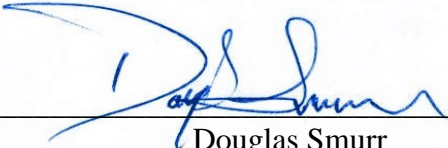
24 8. At all times from our first communication with Marcus Mc Elhenney until the
25 present time, we have each understood that Marcus Mc Elhenney was representing the Ugly
26 Juice Defendants. Ethically, our communication was required to go through him.

27 9. We have no recollection of Marcus Mc Elhenney advising us that he would not
28

1 appear at any hearing in the above-captioned case. On Friday, April 16, 2021, when we last
2 communicated with Marcus Mc Elhenney, no hearings were scheduled with the Court. At that
3 point, we were still hopeful that the matter could be resolved without the Motion.
4

5 I declare under penalty of perjury under the laws of the United States of America that the
6 foregoing is true and correct.

7 Executed this 22th day of April, 2021, in Sacramento, California.

8
9
10 
11 _____
12 Douglas Smurr

13 I declare under penalty of perjury under the laws of the United States of America that the
14 foregoing is true and correct.

15 Executed this 22th day of April, 2021, in Portland, Oregon.

16
17 /s/ Greg Lockwood
18 _____
19 Greg Lockwood
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EXHIBIT 1

1:10 ↗

5G

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Marcus McElhenney >

Text Message
Thu, Apr 15, 4:48 PM

Marcus: This is Doug Smurr regarding the 3M matter. Please send me the email ASAP to: dsmurr@grsm.com

Thanks

Thu, Apr 15, 5:59 PM

Just sent. Sorry that took so long. My guys wanted to give input and I probably should not have let them

Though they are going from being horrified to excited as all hell to help 3M sue the bad guys. Kids these days.

Friday 9:20 AM

Marcus, excuse the interruption from your depo, but are you also representing Blair Borthwick, the CEO and Co-Founder of Ugly Juice?

Hey, just responded to Greg. And we have not yet started... these thing always start late.

I don't think Blair has been with the company in years.

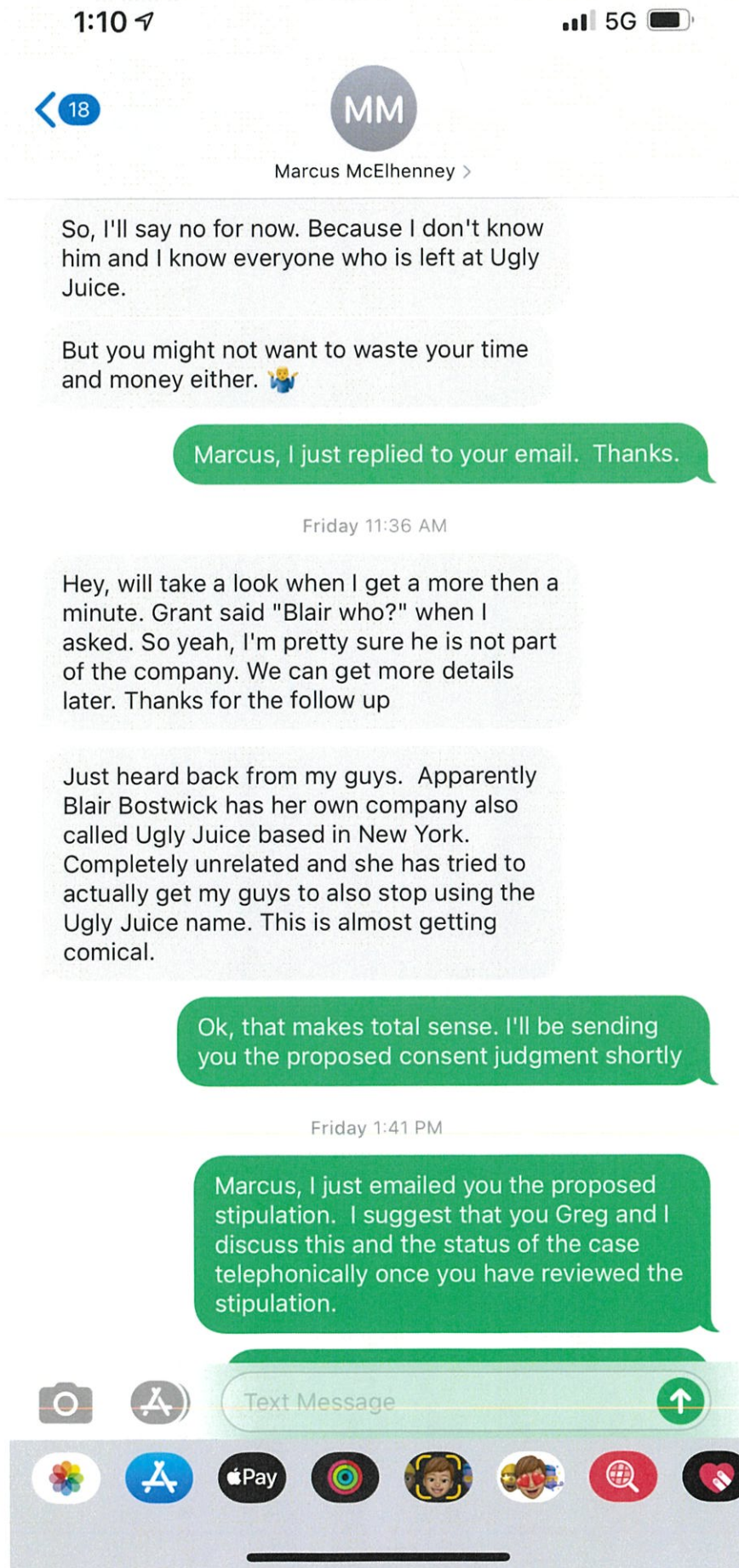
I'm not even entirely sure he was a cofounder.

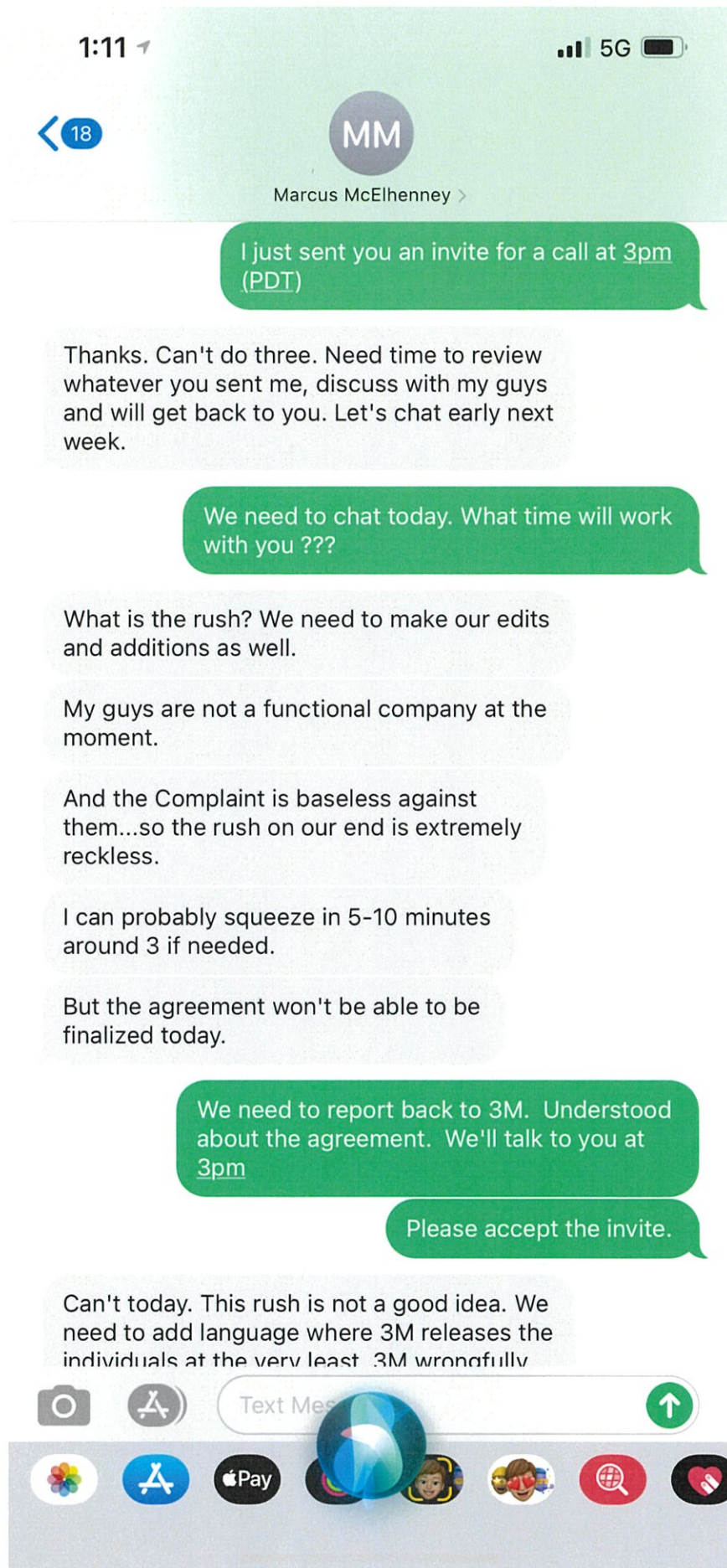
3M has some really bad and outdated information.



Text Message







1:12 ↗

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Marcus McElhenney >

I can probably squeeze in 5-10 minutes around 3 if needed.

But the agreement won't be able to be finalized today.

We need to report back to 3M. Understood about the agreement. We'll talk to you at 3pm

Please accept the invite.

Can't today. This rush is not a good idea. We need to add language where 3M releases the individuals at the very least. 3M wrongfully sued my guys so we need their consession on that and attorneys fees. Please add that and resend for me to review. Thanks!

As in waiver of costs for all parties.

Thanks!

Doug, thanks for the call. I'm not going to work on this over the weekend. So let's push our call to at least Tuesday afternoon. I'm also going to consult with a Fed Trademark attorney on this given all that 3M is asking for. This is MY decision not my clients and I'm sure you will respect that. Have a nice weekend.

Monday 3:15 PM

Marcus: I sent you an email regarding the 3M matter.



Text Message



EXHIBIT 2

From: Marcus Mc Elhenney <marcus.mcelhenney@gmail.com>
Sent: Thursday, April 22, 2021 12:09 PM
To: Douglas Smurr <dsmurr@grsm.com>
Cc: Greg Lockwood <wgllockwood@grsm.com>; Violaine Brunet <vbrunet@grsm.com>
Subject: Re: 3M v. Ugly Juice et. al. 5:21-cv-02338 - Filing of TRO Motion - 3M Remains committed to a mutually agreed resolution of this matter

Doug,

I have no idea what is going on and why there is such a rush, and hearings of which I was invited to when I informed you I would not be appearing in this matter.

[Settlement related text redacted and removed]

As you are aware, Ugly Juice is no longer in business and 3M is throwing a lot of money down the drain unnecessarily right now so we hope they accept this offer. We look forward to 3Ms response.

Be advised that if we do not resolve this in the next week for these individuals, I will not be assisting them anymore and 3M can spend the considerable time/effort/money/energy chasing down all of these Defendants, pursue a case, where they most likely won't get anything useful from Ugly Juice and certainly won't recover any money for this frivolous lawsuit. This is not worth your time, not worth my time, and certainly not worth 3Ms time.

We look forward to 3Ms response.

Marcus

On Mon, Apr 19, 2021, 3:14 PM Douglas Smurr <dsmurr@grsm.com> wrote:

Marcus:

For the reasons explained to you during our telephone call on Friday afternoon, 3M found it necessary to file its motion for temporary restraining order. However, 3M, Greg, and I remain committed to working with you in reaching a mutually agreed resolution of this matter with your clients.

Additionally, we welcome your news to seek the advice of a trademark attorney, as we believe this will facilitate a resolution of this matter for all parties. In fact, I suggest that we postpone tomorrow's possible telephone call until you have a trademark attorney on board. That way, we can schedule our next telephone call on a date and time that is convenient for everyone.

Best regards,

DOUGLAS SMURR | OF COUNSEL
Gordon Rees Scully Mansukhani
YOUR 50 STATE PARTNER®